

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PETTITT, MURPHY LABRADOR
CORPORATION, MAX GSD TRUST OF 1996 by
BARBARA MUSSER, Trustee

No. C 07-5854 CW

Plaintiffs,

ORDER DENYING AS
MOOT DEFENDANT'S
MOTION TO DISMISS

v.

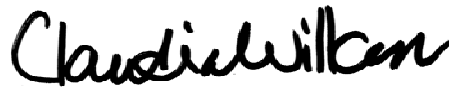
JOHN CHIANG, individually and in his
official capacity as STATE CONTROLLER
OF THE STATE OF CALIFORNIA,

Defendant.

On January 22, 2008, Defendant John Chiang moved to dismiss the complaint filed by Plaintiffs John Pettitt, Murphy Labrador Corporation and Max GSD Trust of 1996 by Barbara Musser, Trustee. On February 14, 2008, Plaintiffs filed an amended complaint. Rule 15(a) of the Federal Rules of Civil Procedure provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." A motion to dismiss is not a "responsive pleading" within the meaning of Rule 15. CRST Van Expedited, Inc. v. Werner Enters., Inc., 479 F.3d 1099, 1104 n.3 (9th Cir. 2007); Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). Because Defendant's motion to dismiss is not directed at the operative pleading, it is DENIED

1 without prejudice as moot. The motion hearing scheduled for March
2 6, 2008 is VACATED. The Case Management Conference is continued to
3 April 1, 2008, at 2:00 p.m. A joint Case Management Statement will
4 be due one week prior to the conference.

5 IT IS SO ORDERED.

6 

7 Dated: 2/22/08

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CLAUDIA WILKEN
United States District Judge